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Developmental Disabilities Special Investigative Committee
January 14, 2010

[LR11]

The Developmental Disabilities Special Investigative Committee met on Thursday, January 14, 2010, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing. Senators present: Steve Lathrop, Chairperson; Colby Coash; Russ Karpisek; and Norm Wallman. Senators absent: John Harms, Vice Chairperson; Greg Adams; Abbie Cornett; Tim Gay; and Arnie Stuthman. []

SENATOR LATHROP: I might make this comment while we're waiting for others to show up. Obviously, this is the LR11 committee, formerly known as the LR283 committee. And the committee was formed by the Legislature to look into and to provide some oversight into how services are provided to Nebraskans with developmental disabilities. We have...the purpose and the goal today is, as most of you know, we issued a report last December. Even though we have not had meetings through the summer as we did the previous year, we have been, each of us, and as a committee been watching the...what's been going on at BSDC and in the community, keeping our ear to the ground. We also get a lot of communications from people, which we appreciate, by way of an update. I thought today that we would try to use this occasion and this hearing to get an update on where we are relative to or compared to a year ago when the committee, on December 15 of '08, made certain recommendations. Those recommendations followed a lot of work and several hearings by the committee. And we've made various recommendations. There are recommendations that have been made by or in the DOJ agreement. And there, of course are things that the CMS wants to see before they'll recertify us. So my thought today in getting together was to provide some of those people who are involved in some of the new leadership that we have, involved in providing services to the developmentally disabled, give them an opportunity to tell us where we are in relationship to the recommendations made by the committee. I think we can agree that BSDC's dark days, hopefully, are behind us. I'd like to and I hope to hear from the medical director and the CEO, have them tell us where have we been, where are we going, what's the plan, and what's the vision. And how are we doing

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in terms of our success and what are the things that we still need to do? And it probably will not involve as many questions as we had during the hearings that we did before. But we certainly do have some concerns still about recertification, which is important to the folks at BSDC as well as the taxpayers of the state of Nebraska. I think we've waited about as long as we probably can. I'll also tell you that we have five people who I've asked, invited to speak. And I don't want to shut this off so that we don't have any input from people who have made a journey to be here and participate. But we're going to hear from Dr. Ramadan who is the medical director at BSDC. I don't think he's been before our committee. And so we're looking forward to that. Dan Howell is the CEO at BSDC. And while we've had a number of hearings, we've never had a hearing, I don't think, since he's been appointed CEO. So we're interested in what he has to say. Julie Drake from the union will be here, Dake-Abel, I'm sorry. Joan O'Meara who is from the parent's group, Friends and Family; and then the CEO, is that the right term, CEO, director, pardon me, the director, Jodi Fenner, will be here. And she's going to bat cleanup so that we have an opportunity to ask her any questions that might occur to us after listening to the four others. If there is time after that, we can open it up so that people will have an opportunity to visit with us, if you like. I have, in order to do this, this is the day before a recess so there's a lot of senators that are already in their car and going home. And in order to convince my committee members that this is a good idea we're going to try to be done by 3:30, if we can. So if there's time after we hear from these four and someone wants to speak, that's great. But if we get to 3:30 we're probably going to...I'll stick around and visit with you if you like. But I think at that point we'll end our hearing. I should begin also by...the little sheet here tells me that I should introduce everyone, so I will do that. My name is Steve Lathrop. I'm the state senator from District 12 in Omaha, Ralston area, and I'm Chair of the LR11 committee. Over to my left is Kate Wolfe who is our committee clerk and she will be taking down the proceedings. Senator Wallman is here to my immediate left, been a member from the beginning; Doug Koebernick, who is my legislative assistant, is to my right; and then Senator Colby Coash from Lincoln, who is one of our newer members but certainly intimately familiar with issues relating to developmental disabilities, and he's certainly an

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asset to the committee; and we're more recently or just now joined by Senator Karpisek. So with that, I think we'll begin and have Dr. Ramadan come on up to the table. You can introduce yourself and we'll give you an opportunity to share your thoughts. []

DR. NAHIB RAMADAN: Well, good afternoon and thanks for giving me this opportunity to speak to the senators and to colleagues and to members of the families at BSDC and to everyone sitting around the table and in this room. I am Nahib Ramadan. I'm the chief medical officer for Developmental Disability at...for...within the state. And I'm working under Jodi Fenner. I have joined the BSDC around the time of April actually. And I've taken this position of chief medical officer in July. The...so I've been here between July...about seven months, six, seven months. My role...my past, at least I'll give you a little bit about my past. I am a neurologist by training. And immediately prior to this position I was a university vice president and chairman of the department. I took on this job because of several things. One, is that I felt that I could make a difference in the lives of people with developmental disability and not just in Beatrice, not just in Nebraska but, hopefully, this will be a model for other states and for the nation. When I joined, I joined, as we all know, at the time of significant turmoil, at the time where we all knew that there were challenges in front of us. And, in fact, with challenges we build strength. And so what we did is we got together as a leadership group and put together some plans where we should go to do several things which ultimately are going to lead to what we need to get to which is achieving the independence of people who we serve and making them safe and healthy. So the framework that was in front of us was actually the framework from the Department of Justice and CMS. And that framework, we used it to build...to assist us in moving forward. So among the several steps that we had taken to improve the everyday lives of people around us was to follow certain tasks and to achieve certain objectives. And I had shared, I believe Jodi had shared with the committee what is referred to as "BSDC CMO Medical Update." I'll start with the ensuring stable medical leadership. What was happening at BSDC is there was flux of leadership. And obviously with flux of leadership we're going to get potential inconsistencies and potential problems. So we started out with providing a stable

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leadership. And since I've been, in July, in the position we've recruited a core of providers and more recently we've recruited a medical director who is going to be serving under me for BSDC and we will transition over the next several months for me to get involved more with the statewide developmental disability. The other component, the other task that we took on is to ensure stability of the providers, of the medical providers. For a while the BSDC was being serviced by local physicians and that does not provide continuity of care. So since then, since I've joined we have recruited three primary care providers who are nurse practitioners and the medical director. So BSDC now is served by four primary care providers who have been with us since August, I believe. So we've had stability of the medical provider, which is quite critical to the provision of primary care services. That is during the business hours. But we had to also look at after hours. And while initially we had provided nocturnal service, which is physicians who are providing service between the hours of 6:00 p.m. and 7:00 a.m. In the morning, more recently, we've come to the agreement with the providers that they will also provide service after hours. So now what we have is we have continuous care by a core of people who know our patients and clients and residents who will be serving them to the best of their abilities. We've taken other steps as well. We've taken steps to ensure that the care is being given under guidelines and under standards of practice. And to do so we've established several...we've put together several steps. One established a quality assurance committee, and a quality assurance and improvement oversight for medical purposes. That creates peer to peer review and that creates audits for systems improvement. We are...we've created an improved system of medical error and medication error reporting and improving. We have put together a system of routine care on an annual basis for primary prevention, wellness, and dental care. And we've been fairly good and compliant with...in compliance with these recommendations. We have since March as well, recognizing that the need exists for specialty care for people with developmental disability, we now have a stable psychiatric and neurological services for our residents. As I mentioned, I am a neurologist and I see some of our residents at times. But we do have daily neurological care that is provided to our residents for epilepsy, seizure medication control, tremors, shakiness, and medication

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reduction when needed. We also have established since December 2008 a stable environment for psychiatric care. And we now have two psychiatrists through our relationship with the University of Nebraska Medical Center who are providing psychiatric care at least four days a week. And they are available after hours for the primary care in case of questions about behavior, questions about medication changes and so on. So we've improved both on the primary care service and on the specialty care service, and we've improved also on the dental service. In addition to that, what we've worked on is we've worked on nursing coverage. We currently have about 182 residents and we made sure that that is adequate coverage at least at each shift. I'm not going to say that we have the optimal coverage yet, but we are close to it. We have the coverage that is necessary to take care of the individuals on three shifts. But we will continue to improve it. The first nursing shift is fully staffed, the second one is close to, and the third one will be very close too. The other improvement comes from psychological care. And what we've achieved is we've achieved a 100 percent compliance with looking at the behavioral needs of our individuals. And we are on our way to develop behavioral support plans that are user friendly. That should be ready by the end of this month. We've established that the nutritional status of our individuals is quite critical and quite critical to address. And that was a CMS and Department of Justice point that they raised. And we have developed plans to move forward with improving the health of our individuals through providing them with the optimal nutritional support. We have hired a consultant who has been with us now about three months. The more recently consultant actually has been with us about three months. But she is likely to stay with us for as long as it takes to have...to provide the necessary framework for our individuals to be healthy in terms of their nutritional status. That is an area that we will continue to improve on. and that is an area that I'm sure at future hearings we'll let you know about that we have achieved the goals that we wanted to achieve. More recently, what we have done is we have established an ethical...an Ethics Committee with the help of two UNMC colleagues. And the purpose of the Ethics Committee is to address issues of informed consent, to look at advanced directives, and related functions that are of importance when caring for people in general, and in

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particular when caring for people with developmental disabilities. So this is really a general overview that I'm giving. And I'm going to leave more time for you to ask me questions rather than me speaking. [LR11]

SENATOR LATHROP: Very good. Thank you for that...your opening remarks. And we'll see if there are questions from the committee. I might have a few. [LR11]

DR. NAHIB RAMADAN: Please do. [LR11]

SENATOR LATHROP: Can you tell us, it sounds, because you addressed this issue which is that DOJ and CMS both had concerns about staffing of and I'll call them, I don't want to call them the professional staff, but can I properly call them the medical people? [LR11]

DR. NAHIB RAMADAN: Sure. [LR11]

SENATOR LATHROP: Including medical, dental, the right doctors, nutritionists, folks like that that are going to have to be in place before we meet the DOJ agreement and before we comply with CMS standards. Is that right? [LR11]

DR. NAHIB RAMADAN: Correct. [LR11]

SENATOR LATHROP: Can you give us a general statement about where we are on that course? I know you talked about some of those disciplines. But are we halfway there? Are we just about there or are we just beginning down the road to fill all the vacancies in that medical professional staffing? [LR11]

DR. NAHIB RAMADAN: In terms of the medical providers we're 100 percent there. We have all the primary care services that we need. And we have all the specialty care services that we need. [LR11]

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SENATOR LATHROP: Incidentally, and I may take this opportunity to interrupt you to ask you this. It sounds like you have a medical director that's working under you and that might be a transition into a new medical director and then three nurse practitioners below them are working in conjunctions with... [LR11]

DR. NAHIB RAMADAN: That's correct. [LR11]

SENATOR LATHROP: ...the new medical director. Is that going to be...is that going to satisfy CMS and DOJ? [LR11]

DR. NAHIB RAMADAN: Yes. [LR11]

SENATOR LATHROP: The use of nurse practitioners is enough? [LR11]

DR. NAHIB RAMADAN: Yes, yes. [LR11]

SENATOR LATHROP: Okay, thank you. [LR11]

DR. NAHIB RAMADAN: Because we have 182 individuals and with primary care services, based on needs assessment that we have...that we have conducted, it's the number of individuals per practitioner is quite sufficient and quite within the norms of standards of practice. [LR11]

SENATOR LATHROP: And the use of nurse practitioners working with a medical doctor satisfies all the requirements at DOJ and CMS. [LR11]

DR. NAHIB RAMADAN: That is correct. [LR11]

SENATOR LATHROP: Okay. [LR11]

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DR. NAHIB RAMADAN: In terms of specialty care, they had the, CMS and DOJ, we have a commitment to provide specialty care oversight. And, I think, it is just not satisfying them, it is actually going beyond that when we have daily neurological and daily psychiatric service and psychiatric oversight. In terms of nursing, I would say that we are not a 100 percent yet. We are 100 percent where...we're not 100 percent where we want to be, where 100 percent that this will actually provide the necessary coverage that is needed for our individuals. We want to improve on it. Psychological services, that today satisfies it, nutritionists, speech therapists, occupational therapists, physical therapists, and respiratory therapists all are in place. [LR11]

SENATOR LATHROP: We've met whatever requirements there are with CMS and DOJ. [LR11]

DR. NAHIB RAMADAN: All are in place. [LR11]

SENATOR LATHROP: You mentioned the importance of continuity of care, having people in place that are going to be around for a while and the problems caused by people coming and going. Are the folks that you've just described these disciplines people that are here for the long haul? [LR11]

DR. NAHIB RAMADAN: Yes, they are, except for the consultant that I mentioned as the dietician. But we do have three other registered dieticians who are employed. So that satisfies the needs. [LR11]

SENATOR LATHROP: In your remarks you suggested that there's a new medical director that you're working with in some kind of a transition and that you're going to take on a new role. Can you tell us, first of all, who the person is and what your new role will be when you transition them into the full-time medical director at BSDC. [LR11]

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DR. NAHIB RAMADAN: Gladly. The new medical director that is going to sign on is Dr. James Arond-Thomas, and he's been with us now since approximately August. And his contract is about to be signed. His transition is...there are several purposes for the transition for working with me until we are satisfied that the transition is fully satisfactory to people that we are going to serve. One is we're still going to remain under the restriction of the license until we are sure that the medical director knows all the needs of our residents. And that takes a few months. Subsequent to that, I will continue to work with the medical director to ensure that we get recertified. And I think this is critical that we get recertified. What I would do next besides working with the medical director and folks at BSDC is working under the leadership of Jodi to provide the medical services and the interdisciplinary and professional services needed to all people with developmental disabilities under the state of Nebraska. So we would like to develop a network. I'll be working on a network of medical service provision to people within the state of Nebraska and, for that matter, for private institutions if they want to have our services. The BSDC has a nucleus of "interprofessional" and interdisciplinary care that is envious and that is the model that the Institute of Medicine asks for, for any discipline, not just for developmental disability. And we have that nucleus. If we can build upon it then I think we, as I said earlier, we will be a model for the future. The other thing that I would be involved in is I would be involved in the relationship with the University of Nebraska Medical Center to enhance the health professions' curriculum toward developmental disability and, hopefully, creating a pipeline. Because I went to medical school, and not just me, a lot of people who...everybody who went to medical school had little, if any, training in developmental disabilities. So if we develop this and if we use the University of Nebraska Medical Center as a pipeline, that's a wonderful thing to do. I will work with the community services to actually develop continuing education for the public as well about recognition of illnesses associated developmental disability about caring for people with developmental and intellectual disability. And then finally there is a lot of opportunity to conduct...to work with the University of Nebraska to establish core research to really better understand what is needed for people with developmental disability. And that's one of the future goals that I have. [LR11]

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SENATOR LATHROP: Very good. That's intriguing. Your working with the university, I think, is a wonderful opportunity to take advantage of a resource and bring doctors and medical folks in that will be able to meet the needs of people with developmental disabilities. Any other questions? I don't see any. Thank you... [LR11]

DR. NAHIB RAMADAN: Thank you very much. [LR11]

SENATOR LATHROP: ...very much for coming here today and for your work with the folks at BSDC. Mr. Howell. Is it...I'm saying Mr. Howell. Is it Mr. Howell or Doctor? [LR11]

DAN HOWELL: Oh, Mr. [LR11]

SENATOR LATHROP: Mr., okay. [LR11]

DAN HOWELL: And usually is they say "Mr. Howell," I look for my father in the room. So it would be... [LR11]

SENATOR LATHROP: Okay. [LR11]

DAN HOWELL: ...Dan is fine, but thank you, Senator. [LR11]

SENATOR LATHROP: Well, we'll try to observe a little bit of a formality here. [LR11]

DAN HOWELL: I truly do appreciate that. [LR11]

SENATOR LATHROP: Thanks for coming. [LR11]

DAN HOWELL: Thank you, Senator. Senator Lathrop and other members of the

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committee, my name is Dan Howell. And for the past five months I've had the opportunity and the great privilege to be the chief executive officer at BSDC. And I say it's a privilege because it truly is. I want to let each of you know that BSDC has been, in the past, and will once again become a shining example for persons with disabilities around the state of Nebraska, as well as this region and the country. My background is I've a master's degree in management and organizational leadership from the University of Mary. The past decade, prior to coming to Nebraska I was the chief executive officer of the Anne Carlsen Center in Jamestown, North Dakota. And I want to thank each of you for making me feel right at home with the winter we're having here. And if you'd like to blame me, please do that, others have so far. Prior to that, though, for 15 years prior to that I ran three small hospitals in the state of Nebraska. So I have a little medical background, but over the last decade primarily with developmental disabilities. When I first came, people asked me, have you read, you know, the LR11 report? Have you read what Nebraska Advocacy said about BSDC? Have you read the Lincoln Journal Star and the Omaha newspapers? And I had. And when I interviewed, the reason why I chose...I was happy to take the job when it was offered was, first of all, the woman sitting to my left is Jodi Fenner. I really, truly believe that she is a breath of fresh air for developmental disabilities around the country, just not the state of Nebraska. You have an absolute gem with her and I feel privileged to work with her. Also I found that people at BSDC are very passionate about the individuals we support. We have over 800 employees who are today supporting 182 individuals. And I can tell you firsthand that we have incredibly passionate and skilled individuals at each of those levels. And much like Dr. Ramadan, we want to make a difference. We believe that we have a window of opportunity in the state of Nebraska to once again bring people with developmental disabilities back to the forefront and to the level of care that they had and they deserve in the future. And I really feel very proud and humbled to be a part of that. When I was asked to come today what I was asked to do is to talk about what I first saw, my first impressions when I came to BSDC, kind of what we're doing about those impressions and then where we're going in the future. I think, Senator Lathrop, you asked kind of the vision for BSDC in the future. And I'll spend some time doing that. When I first came

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what I saw was a fear of transparency, not a lack of transparency, a fear from our employees. They were scared to tell the truth. And I didn't ask why, they were just fearful. And over time, what's changed and as I look back at my schedule over the last two months, we had a number of employees come in to my office and they're feeling more and more comfortable about saying this was a very private conversation and we respect their privacy and they're sharing some concerns and some thoughts. I'm very honest and say, if that's an issue that we're choosing not to address, I ask them to understand that and I give them the reasons why or we look into it and we set up a time to come back and share with people what we're doing about that. I saw a great void in communication from the top levels of leadership to the direct support professionals. There seemed to be this chasm of communication. And a little bit later I'll share with the committee what we're trying to do to try to bridge some of those communication gaps. (Inaudible) organization, I believe, were reactive instead of proactive. We made decisions based on what we needed to do at the time without looking at some root cause. And so I would like to see us go into more of a proactive approach and planning and creating a vision and then trying to use strategies to create that vision. Also heard that the employees didn't have a voice. And that goes back to that lack of communication. I keep hitting on that because it really got down to something I think the LR11 Committee, in the report, said it was a negative culture. I believe BSDC had somewhat of a negative culture, one that wasn't conducive towards really meeting the needs and the desires for persons with disabilities. So as we looked at it, and people who know me well, we talked, and the first meeting that I met with employees about was really for simple principles; one is dignity. If it's not dignified to each other or if it's not dignified to the individuals we support, we're going to choose not to go in that direction. If it's not respectful, if it's not respectful to one another, if it's not respectful to the individuals we support we're not going to look at doing that. If it's not empowering, our job solely is to empower our employees and empower the individuals we support to be living in the most inclusive environment possible. If we don't do that we've erred. And lastly, our job again is to create the greatest independent living environment possible. So people are starting to recognize those are the four things that we hit on daily, time

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and time again, we're not changing from those four basic principles. My grandmother told me that you have two ears and one mouth and we use them in proportion to one another. So when I first came, I listened and I still listen. I've attended at least every departmental meeting on our campus one time and listened to the thoughts and concerns from employees as they went through their departmental meeting. We have had monthly all staff meetings on all three shifts. We have them usually late morning, middle of the afternoon, then one at 9:30 at night. We've done that monthly since September and we're going to continue to do that. We routinely have about 100 employees show up at all three meetings. It's, you know, 12 percent of our employees are showing up. We'll do it if three people show up, it's that important to us. And at those meetings we talk about where we're going as an organization, what the issues are, what can we do to resolve them. And if there are pertinent issues that are organizational in nature we'll get back to people as quickly as we can and share with them the results. We have created weekly meetings with Nebraska Advocacy Services. It is important to us that organizations that have a vested interest at BSDC have a voice, and so we are now meeting scheduled with Nebraska Advocacy. We continue to meet with guardians as a group, the parent organization that Joan O'Meara is a part of, the Mental Retardation Association of Nebraska, as well as individual guardians when problems arise to address issues. It's important that we hear them, it's important that we're transparent in the good things that are going on in the organization, and the things that aren't going so well. Internally, we've created some electronic communication boards throughout campus that talk about issues related to BSDC and things that are going on, on our campus. We now hold weekly home manager and QMRP meetings. Delvin Koch, who was here today, our head of Neighborhood Services is now beginning to hold Neighborhood Service meetings on a weekly basis. That's where most of the information that happens at an executive level will come down to. And then it's the home managers responsibility to share that with their staff on our campus. On an every other week basis, Jodi Fenner and I are going to begin communication through an internal video usage, it's called Channel 5, where we talk about...Jodi will talk about what's happening in developmental disabilities, I will talk about what's happening at BSDC.

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We've also met with a number of providers around the state of Nebraska, talking about collaborative partnerships that we can be a part of, as to what role should BSDC play in community providers. My favorite part, though, is interacting with the individuals we support, whether it be from going to lunch with individuals, going to camp in Nebraska City, or actually going garage "saling." When I first came to town I actually wore purple on a Nebraska Cornhusker day and I was quickly told I couldn't do that. So we went garage "saling" so I could support the red of Nebraska with some of the individuals on our campus. Where we are going as an organization, though, is critical for this committee as well as the state of Nebraska. We want to create an environment that suggests that BSDC is a service and not a place, it's just not a campus. We want to be able to support persons with disabilities, whether they live on our campus or whether they live in outstate Nebraska we feel that we have the expertise and the skill sets necessary to be a part of individual's lives. Our goal is to prepare a place where individuals can live in the most inclusive setting possible. And to that end with guardian support, with individual support, and partnering with new and existing providers we want to see people make successful transitions in the community if able to. Today what BSDC is looking at doing to help begin fostering some of those transitions is looking at doing things like dining in the homes. No longer are they going to what we call coed dining to eat. We want most meal prepared in the homes. We want individuals, to the extent possible, helping to prepare the evening meal, whether it be sitting in the dining room, whether it be opening a can, whether it being to able to, with an adaptive device, loading the dishwasher. We want to ensure that individuals do their own laundry or each of the homes have the support to do laundry services in the home, no longer should it be done on an institutional basis, that's not how that happens in a community setting. We want to ensure that each of the homes have...they're cleaning their own homes. No longer should we have an institutional housekeeping service come in and clean the homes. Individuals, to the extent possible, along with staff should do the majority of the cleaning. We're happy to announce that our vocational programs are moving off campus. The majority of our vocational opportunities will be done in the community of Beatrice or the surrounding area. And today I'm most pleased to share with you that two

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of our 182 individuals actually have employment in the community, paid employment in the community. I'm thrilled for that. I know it's a small number but we have to start somewhere. Any vocational opportunities that will be on our campus will be time limited and will be a training ground for people to move into the community, whether it be in supported employment or volunteer employment. All of this though leads to our recertification efforts and our compliance with the DOJ agreement. As we speak, we are going through internal mock audits. Our staff is auditing our own organization with the eight conditions of participation to see where we fit. Once those are finished, once the analysis is done we will look at doing an outside mock audit. We will bring in an outside entity to do the same thing, to see how prepared we as an organization are for asking for recertification visit. And not...until those two things occur we, I don't believe, will be in a position to ask for a recertification visit from CMS. Once we feel confident that we have everything in place, whether it be from the medical support to the other seven conditions of participation, only then will we ask for that. Today, if asked, I believe we could pass a survey. But we would pass at the margins, at a very, very low margin. And I don't think that's fair to our staff. We want to ace this test. I believe fully that we will ace this test. We have some obstacles and we have some roadblocks ahead of us and we have a lot of work ahead of us. But our staff is committed to doing that. I am thrilled, again, to be a part of this process and would certainly be willing to answer any questions, Senator Lathrop, you or other committee members have or speak about...I think we did share with you some overtime reports and our restraint reductions. I'd be more than happy to share those two items with you or any other questions you may have. [LR11]

SENATOR LATHROP: Senator Coash. [LR11]

SENATOR COASH: Thank you. Thank you, Senator Lathrop. Dan, thanks for being here. Hearing good things about you from my colleagues in the disability field. So we're glad that you're here. I was wondering if you could speak a little bit going in the future at BSDC. Right now I heard the census is...we're serving 182 people. [LR11]

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DAN HOWELL: Correct. [LR11]

SENATOR COASH: Okay. Now I was waiting for you to say, and you did say we're working on every one of those individuals should have the opportunity to transition and live in the community. So I fully support that goal. If nobody left, in a long enough time line our census would be down to zero. And when we talk about the future of BSDC and the future of the people who work there, can you speak a little bit...what I'm trying to get at is what kind of folks are we serving there at BSDC? People will be coming in for services there. What does that look like? I mean, for example, we know that the folks with high medical needs, that's no longer an option for an example because of the limited licensure to be served there. So my interest is, you know, in the...what kind of people are we going to be serving down the line? What's the...how are people coming in? You mentioned how people are leaving. But, you know, if your goal was successful of everybody being served...that's there gets served in the community, eventually nobody is going to be there unless there are more people that benefit from the services. So how do you...does that question make sense? I'm trying to get a feel for the long-term future of BSDC and what kind of services will be there. And if it's not for people with high medical needs, what kind of folks are we looking at serving there? [LR11]

DAN HOWELL: Sure. I think that's a great question, Senator Coash. If I understand it right, is if all individuals transition off of campus, what does the campus look like? Am I paraphrasing that? Today, like you said, we have 182 individuals on our campus. In the future, as Dr. Ramadan indicated, and I think as Ms. Fenner will talk about, the medical clinic that we have on our campus, we will open to other individuals throughout the state of Nebraska who have developmental disabilities. We will...they'll have access to dental services from our campus. And so we'll have a medical opportunity for individuals to come in as an outpatient, in a clinical setting, both physical therapy, occupational therapy, speech therapy, dental, and medical office visits. The staff that are taking care

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of individuals on our campus today, I believe, will help transition individuals into the community. So from an employment standpoint I see our role, if we're looking at it from being a service not a place, we are actually going to help other providers support individuals in the community. I think that's missing piece to the transition. Many individuals from BSDC have attempted transitions in the past and they've been met with limited success. To me some of the key factors is some of the people who know the individuals the best will help and assist in supporting that. So from an employment standpoint I see individuals still being employed but in a different capacity. They may not be serving individuals on our campus, they may be serving people around...in the community of Beatrice or the surrounding areas. I'll be honest, we haven't got that far, what happens when we're successful with 182 individuals and transitions. We are focusing our attention on how we do that today. But that next step, we just haven't quite got there yet or our staff hasn't fleshed that out. [LR11]

SENATOR COASH: Okay. [LR11]

SENATOR LATHROP: Any other questions? Senator Karpisek. [LR11]

SENATOR KARPISEK: Thank you, Senator Lathrop. Dan, thank you. I am more than excited and happy about what I am hearing. I am holding a little breath until we hear from the next two speakers and hear what they have to tell us. But, yeah, I think things are going great there. One of my concerns, and I agree with Senator Coash that those people should be able to get out into community settings. I worry about getting people out there that aren't ready or shouldn't be out there. [LR11]

DAN HOWELL: Yeah. We...and thank you, Senator Karpisek. We fully support that. Until guardians are on board with that, until the individuals that we're supporting are comfortable with a community transition, until the community where they go is comfortable with and has the adequate wraparound supports, you know, that won't happen. You have my assurances that we are not going to send people in the

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community that we have concerns that may not be as successful. Because going back and forth serves nobodies best interest. And our staff is committed to ensuring successful transition. And successful transition may happen tomorrow, it may happen years from now, but that's our commitment to the guardians and to the individuals that we support. [LR11]

SENATOR KARPISEK: And I'd also like to say I'm really impressed with...you're talking about listening to the staff. My district is right next to Senator Wallman's district, so I have quite a few people who work there and some that live there too. But that has always been a concern was, like you say, I'm scared to say anything, but if I did nobody will listen to me anyway. So I appreciate that. And I've heard it's better, it's not...it's a big shift. You're not going to turn it overnight. But I do appreciate your work and thank you for coming. [LR11]

DAN HOWELL: And thank you for that, those comments are very kind. [LR11]

SENATOR LATHROP: Senator Wallman. [LR11]

SENATOR WALLMAN: Thank you, Chairman Lathrop. Yeah, glad to have you aboard. And regarding the waiting list, you know? [LR11]

DAN HOWELL: Yes. [LR11]

SENATOR WALLMAN: You still see new residents coming in and filtering through to private care? [LR11]

DAN HOWELL: We have not, in my five months, we've not seen new admissions to BSDC. The hope and the goal is individuals should...can be supported in the community, Senator Wallman. And if BSDC can be a part of that process we certainly will. In fact, our staff is excited about those opportunities. With that waiting list, I think

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that's a better question for, you know, my boss, Jodi Fenner to help address. [LR11]

SENATOR WALLMAN: Okay. Thank you. [LR11]

SENATOR LATHROP: I do have a few questions for you. You talked a little bit ago about...you've been performing mock audits. [LR11]

DAN HOWELL: Yes. [LR11]

SENATOR LATHROP: And I appreciate a mock audit would just be an examination of yourself in terms of how you're doing relative to the CMS criteria and ultimately the same criteria...which are ultimately the same criteria that will be used to evaluate whether we're recertified. [LR11]

DAN HOWELL: Yes. Correct. [LR11]

SENATOR LATHROP: When did you...when did BSDC begin the mock audits? [LR11]

DAN HOWELL: We began the mock audits the first week in January of this year. [LR11]

SENATOR LATHROP: Of this year. [LR11]

DAN HOWELL: We just began the mock audit. We just received the survey tool that we're using the first part of January. Have divvied up those responsibilities to staff to complete the mock audits. Our hope is by late January to have those completed. Once the analysis and results are in we will make an assessment of areas we need to work through and then look at contacting an outside organization to do the same type of mock audit for us. [LR11]

SENATOR LATHROP: So the process towards recertification is essentially you will do

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mock audits until you satisfy yourself that you can pass the mock audits, and then bring in someone who is a contract auditor for the purpose of telling you that you're likely to pass or not pass a recertification audit? [LR11]

DAN HOWELL: Correct. [LR11]

SENATOR LATHROP: Or a recertification survey. [LR11]

DAN HOWELL: Correct. [LR11]

SENATOR LATHROP: The handouts, and I'm looking at these handouts that are coming along. First of all, let me ask you about the overtime. There is a chart, various charts that you have provided that address the issue of overtime hours. And as I recall, particularly the DOJ report was very critical of the overtime. [LR11]

DAN HOWELL: Yes. [LR11]

SENATOR LATHROP: And this looks like there's improvements in overtime. But is your overtime at a place where you could pass a CMS survey and satisfy DOJ? Or is there still necessary improvement? [LR11]

DAN HOWELL: Necessary improvement, no, I think we do suffice the requirements for CMS and DOJ. We are going to continue to work on our overtime. I think there's always going to be, you know, between 8 and 10 percent overtime in an organization our size. And, you know, with that being said, we're going to continue to work on it. But today I believe those issues that the DOJ and CMS...DOJ specifically had would be removed because of our work and efforts in this area. [LR11]

SENATOR LATHROP: What level of overtime will they tolerate? [LR11]

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DAN HOWELL: I'm not certain, Senator, exactly what the minimums are. [LR11]

SENATOR LATHROP: I'm looking at the chart for the last year and it looks...this appears to be done on pay periods. Is that right? [LR11]

DAN HOWELL: Correct. [LR11]

SENATOR LATHROP: Two-week pay periods. [LR11]

DAN HOWELL: Correct. [LR11]

SENATOR LATHROP: And there's maybe 2, 4, 6 pay periods out of 26 where we have less than 10 percent overtime. [LR11]

DAN HOWELL: Correct. [LR11]

SENATOR LATHROP: And then we had a bump in the December 21, '09 to January 3, 2010. [LR11]

SENATOR COASH: Holiday. [LR11]

DAN HOWELL: Yeah. [LR11]

SENATOR LATHROP: Is that what it is, the holiday? [LR11]

DAN HOWELL: I think it's holiday and the two prior were snowstorms, were snow events. I think we handled them remarkably. We didn't have...we had as low of overtime as we did, but the last one would have been the holiday period. [LR11]

SENATOR LATHROP: Yeah, it did look like it was improving and then it started to spike

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up. [LR11]

DAN HOWELL: Yeah. [LR11]

SENATOR LATHROP: And that was the question I had. Next question I have for you is this chart that's called the "BSDC CMO Medical Update." Are you familiar with that or am I directing the question to the wrong person? [LR11]

DAN HOWELL: I am...it would be to Dr. Ramadan. So... [LR11]

SENATOR LATHROP: Okay. And then tell us generally how we're doing on restraints. That seems to be a place where there's no room for or no margin for tolerance in DOJ and CMS. [LR11]

DAN HOWELL: We are doing, I think, remarkably on our restraint minimization. If you look at the chart specifically this last year, if you just compare ourselves in the first quarter of '09 to now,... [LR11]

SENATOR LATHROP: Which chart are you looking at? [LR11]

DAN HOWELL: If you'd look at the first page of, I'm actually trying to find my overtime chart, it would be the one that looks like this, Senator Lathrop. It's right here, it's more in a table format. If you look at the '09 numbers with that and in the first quarter of 2009 actually 20 individuals had, it's not low, but 20 individuals had restraint usage in their programs or in their behavior support plans. Of those 20 individuals, we had 4,055 mechanical programmatic minutes. If you look at the last quarter of 2009, we have 842 minutes, a 79 percent reduction. When you look at overall restraint usage, both Mandt' and mechanical restraint, our decrease is 62.1 percent of that. We have made a conscious effort over this last year and specifically beginning in the third quarter to look at how and what ways can we implement to reduce mechanical restrains, both

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programmatic and emergency. And I think we've been successful at doing that. We will not stop until we hit zero. It is important for transition, it's important for individuals in a community setting for us to have no programmatic mechanical restraints. [LR11]

SENATOR LATHROP: What does DOJ and CMS require you to get to before you could pass...well, not...what does CMS require for restraints before you can...what will they tolerate, if any, before you can pass a recertification? [LR11]

DAN HOWELL: Senator Lathrop, I don't have the answer as to the minimum standards. I will certainly get that for you. My personal tolerance is zero mechanical restraints. And we will work tirelessly to get there. It is an industry standard that there are no restraints. [LR11]

SENATOR LATHROP: Okay. And I have two more questions for you. Do you feel like you're getting the resources you need in order to succeed? [LR11]

DAN HOWELL: Yes, the short answer is yes. Everything that we have asked for, everything I've asked Jodi for, Jodi has been graciously able to and graciously accepting of those requests and have given us the resources. [LR11]

SENATOR LATHROP: And I'm confident that that's the case. My question is a little bit different. And, I guess, I make this comment. It is difficult for us to have people come in who know the business, who are there day-to-day and for us to ask all the right questions to know everything there is. We could probably do that and it would take a week, and it would look a lot like a deposition, which you don't want and we don't have the time for. Ultimately, ultimately, how we regard the work that you're doing will be a function of whether you comply with the DOJ,... [LR11]

DAN HOWELL: Correct. [LR11]

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SENATOR LATHROP: ...whether we satisfy the independent expert, and whether you can get BSDC recertified. And the reason I ask you about the resources is what we don't want to do is get a year down the road and have you come back and say, you know what, we didn't get recertified or we couldn't meet the requirements of the DOJ agreement because we didn't have the money, the staff, some resources. You're comfortable with the fact that you have the resources you need to take us to recertification and bring BSDC back to the golden age, I think is your term? [LR11]

DAN HOWELL: Yeah. I am very confident that we have the resources. And if we need them in the future, I have great assurances that we will continue to get those resources. [LR11]

SENATOR LATHROP: Okay. And the last question I had, it's kind of simple. When I took...when we took a tour we saw vocational services that ranged from people from BSDC, the individuals that you serve, their vocational services might be in the classroom, then might be doing jobs, for example, folding towels, folding washcloths, doing things like that. And you said you're taking the vocational services off campus. My question is, is everybody still getting vocational services or are those people whose vocational services used to be folding towels now not getting services? [LR11]

DAN HOWELL: And if there was a misunderstanding, I apologize for that, Senator Lathrop. No, the short answer is everybody is getting vocational services or as CMS would call it active treatment. We are looking at, specifically for the individuals folding towels we want them folding towels at the Holiday Inn, we want them folding towels at the YMCA. We want them to learn the skill at BSDC, but that's a transferable skill into the community. And so that's what the classrooms are being set up as. And it's looking at the individuals' interest, matching it with the job that they want in the community, and then teaching that skill within a classroom setting for a time limited period. So I'm sorry if I gave you the wrong impression. [LR11]

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SENATOR LATHROP: No. I just wanted to clarify it. Because I wanted to make sure that if you're taking vocational services off campus, that everybody has access to them. [LR11]

DAN HOWELL: Absolutely. I apologize for that misunderstanding. [LR11]

SENATOR LATHROP: Okay. Senator Coash. [LR11]

SENATOR COASH: Thank you, Senator Lathrop. Dan, I wasn't satisfied with the answer for my first question. I'm just going to ask it in a different way and see if that gets us better... [LR11]

DAN HOWELL: Okay, okay. [LR11]

SENATOR COASH: ...see if that helps both of us. I look forward to the day when BSDC isn't needed. [LR11]

DAN HOWELL: Okay. [LR11]

SENATOR COASH: And what that means is services that people with disabilities in Nebraska need are available when they need them in the community near their families, not in southeast Nebraska. I look forward to that day. I don't think we're there yet in our state. But that...you've talked a couple of times now about that. So your goal...that should be our state's goal, and I agree with that. Until that day, I believe in the continuum of services for people with disabilities in our state there is a place for BSDC. There's a place in the continuum for what BSDC can offer given the way it's set up, the expertise that you've talked about and all of those things. So I believe there's a place for that. Where do you see BSDC's place in the continuum of services for people with disabilities in Nebraska? Does that make sense? [LR11]

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DAN HOWELL: That does. And I apologize, we probably weren't on the same page in the last question. My belief the role of BSDC is a time-limited environment for individuals. I think BSDC staff has an expertise to address and support the needs of the most significant developmental disabilities around the state of Nebraska. I think we can be a resource to other providers, number one. I believe, potentially, on a time limited basis that we could support individuals on our campus but then send them back into a community setting. And that's again in that "transitory" time that, Senator Coash, you talked about. But again, everything that we do will support and emulate a community setting. But we want to look at ourselves as a resource to people in how we accomplish that. [LR11]

SENATOR COASH: Okay. So if I can throw this back at you, so I wrote down three things that I heard you say. BSDC's...their deed in the continuum would be in providing resources out in the community. I heard you say the word high needs, so people with high need, presumably behavioral needs, maybe medical needs. And then I also heard you say on a short-term basis. So folks who need that type of intervention can get that at BSDC but on a short-term, and then go back to the community where they were. Is that accurate? [LR11]

DAN HOWELL: You know, that is accurate. Everything, again, that we want to do is on a time-limited basis. So we don't want to set ourselves up as an intensive treatment service. We want to set ourselves up as a resource to the community. And so if there's a need out there, we'd certainly like to address it in the community first. But in the end, if it has to be on BSDC's campus we'll support that. Okay? All right? [LR11]

SENATOR COASH: That's closer to the question...the answer to the question I was trying to ask. Thank you. [LR11]

DAN HOWELL: Okay. Thank you for that. [LR11]

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SENATOR LATHROP: I see no other questions. Thanks for coming down today, Dan. [LR11]

DAN HOWELL: Fantastic, thank you. [LR11]

SENATOR LATHROP: It's good to see you again. Next on our list is Julie. And I said Drake, I know better, it's Dake-Abel, pardon me. [LR11]

JULIE DAKE-ABEL: Good afternoon, Chairman Lathrop and members of the committee. My name is Julie Dake-Abel and I'm executive director of Nebraska Association of Public Employees, AFSCME Local 61. We represent a large number of the state employees, as many of you know, including much of the staff at Beatrice. I wanted to talk a little bit about Beatrice, some of the feedback we've gotten and what we're kind of seeing over the last, particularly over the last six months. With the newer leadership of Jodi Fenner and Dan Howell, we believe that BSDC is on the path for improvements. Leadership has been more visible, especially Jodi as she has visited every individual in their home at least once down at Beatrice. Mr. Howell has, overall, been positive and supportive of staff and more visible than previous CEO's there. He and Jodi are both more respectful of individuals and the staff. Staffing has improved at the facility and there is less mandatory overtime. You know, as you talked about previously, there was a little bit of spike, I believe, towards the end of December, beginning of January. But we're not seeing that a trend right now as the department pointed out. We believe there are also less serious injuries occurring there as well. We believe they're on the path of where they need to be, but also keep in mind it's not just a facility, it's hundreds of wonderful citizens of this state. You know, it's a second home to their families as well as the staff of BSDC. We've been very grateful for the committee's work in this area because they deserve to have the best life possible, the people at BSDC. We do believe it is a great place, but also that the Governor's Office and persons in previous years also wanted the facility to fail. I hate to say that but I do believe that that...that there may have been that thought process going on. It would be easy to look

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at a facility fail and then privatize the facility. It would show that government isn't working. I certainly hope that that would not happen. We've been very fortunate that with community partners, with Senator Lathrop, other state senators, with their involvement and advocacy that BSDC is doing well. I believe the state needs Beatrice and it's need the oversight that can only occur with it being a government run facility, because it's the only one of its kind in the state. I can tell you that previous to my work in the union I worked in the developmental disability field for over ten years. And it's, with all due respect, Senator, it sounds great to put people out there in the community and for them to, you know, be out with their families. The reality is there's people that don't have families. There's people, I found when I was a service coordinator for people with developmental disabilities here in Nebraska, and I did that for about five years as well as developmental disability work in other states that sometimes Beatrice really was the best place for those individuals because the providers just weren't up to that as well. And, you know like I said, I, personally, believe that it would be wonderful if there could be more community involvement. But there has to be government oversight, there has to be a certain place for certain people. And Beatrice overall has been able to meet that need. So this is also an issue kind of close to my heart too. I am pleased, overall, the direction of Jodi Fenner and that the staff and individuals are getting more support that they need. Until they receive their federal certification, until we're sure that Beatrice will not be privatized and things are going as they should be and have for a period of time, believe that oversight is still needed. I'm certainly encouraged, although a little cautionary just because of some past experience, but I am encouraged and new hope for Beatrice under the new leadership. I know it's not an easy task to take on. I do commend the work that's being done at Beatrice. And I appreciate the committee's diligence on this issue. [LR11]

SENATOR LATHROP: Great. Thanks, Julie. [LR11]

JULIE DAKE-ABEL: Um-hum. [LR11]

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SENATOR LATHROP: Can I ask you just generally, and you may have addressed this indirectly. But from what you hear from the direct care staff, do they feel like morale is picking up? [LR11]

JULIE DAKE-ABEL: Yes. There's... [LR11]

SENATOR LATHROP: That was a significant issue. [LR11]

JULIE DAKE-ABEL: Yes. [LR11]

SENATOR LATHROP: And we talked...the committee...the report from the committee last December talked about the morale and the problems with the culture. Is it there since the employees sense that that's improving with the new leadership? [LR11]

JULIE DAKE-ABEL: It is improving. And, I think, you know, several things have contributed to that. Obviously, more of the positive support I believe they're getting, more visible leadership that's around. There have been some changes, it was kind of hard for staff, but the department, especially Ms. Fenner was very up front about what changes they needed to do and why, which helped that transition fairly well. It has also helped out the fact that mandatory overtime has been down, so therefore the burnout rate is not as high and that kind of lowers the stress. But yes, it is a culture that does seem to be improving. [LR11]

SENATOR LATHROP: Very good. That's good, terrific to hear. Senator Coash. [LR11]

SENATOR COASH: Thank you. Thanks, Julie. When all this started to happen and frequently you'd see in the media, you know, an employee...it just seemed like once in a while and more frequently employees would be getting drug through the mud a little about things that were occurring at BSDC. And I believe that everybody down there is doing the best that they can. And my guess is many times they're doing what they're

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trained to do or at least by default, by absence of somebody saying, this isn't the right thing to do, by consent they were...by their sense they were consenting to certain things. So one of the things that I was very interested in when we started to look at this was staff training and how the culture at BSDC was shifting towards teaching the staff what to do and taking more of an interest in how staff were being trained so that behavior that we did see in the media from time to time stopped. Can you...are you able to speak at all to any of the training of the employees and how that's impacted some of the changes? Do you know if the employees are feeling like they're being supported and learning what they need to do to support the individuals who live there? [LR11]

JULIE DAKE-ABEL: I know some about that. You know, I do know there has been some increased training going on down there. I do know that there are still...there's still some concerns going on, some related to training, some indirectly related to training, because we do still have, you know, disciplinary procedures going on and quite a few grievances. So there is still a way to go on that. Ms. Fenner may be able to follow up on some of the more exact training that they're down there to help better answer your question. [LR11]

SENATOR COASH: Oh, fine. Thanks, Julie. [LR11]

JULIE DAKE-ABEL: Um-hum. [LR11]

SENATOR LATHROP: I see no other questions. Thanks for coming down, we appreciate it. [LR11]

JULIE DAKE-ABEL: Okay, thank you. [LR11]

SENATOR LATHROP: Good report. Next, Joan O'Meara. [LR11]

JOAN O'MEARA: Hi. I'm Joan O'Meara. And I am the mother of Cindy O'Meara. And I am the head of the Beatrice Family and Friends Association. I belong to MRAN, which

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is Mental Retardation Association of Nebraska and I'm on the board there. And I belong to DOR, which is our national organization. And our national organization, we go to Washington and we get bills passed there. We have two now pending which will be good. One of them is to prevent closing of ICF/MRs across the nation. [LR11]

SENATOR LATHROP: Can you pull that mike down just a little bit so that the recording is picking it up. [LR11]

JOAN o'MEREA: Yeah. How's that? [LR11]

SENATOR LATHROP: Good. [LR11]

JOAN O'MEARA: Got it? Okay. As I said, I'm the mother of Cindy O'Meara. She was one of 47 that ended up in the hospital. While she was there I saw that the deterioration every single day of what was happening to Cindy. She did not have active treatment, with that she did...she kind of withdrew herself. She no longer fed herself. She didn't jabber, she didn't blabber, she didn't tease, she was just becoming a shell. She often would go to sleep to withdraw. If it wasn't for Jodi Fenner and Jenny, from Mr. Wallman's Office, and her back into BSDC, I think Cindy would have died, as simple as that. She was a resident of BSDC for 45 years. She was used to everything there. Do I see a change? You bet I do. I think Jodi Fenner has a tremendously big, big job ahead of her. Has she made some dents? Yes. We have Mr. Howell now. We had at the very beginning two very great CEO's and really three good CEO's, strong, always around the campus, always talking to the workers. And then we had this big lull, for 30 years, I think, fighting, saying things are wrong down there, let's get with it. No one listened until all of a sudden everything piled in and we were in turmoil. And yet we had workers that stuck with us and took care of our kids through all of this. And then we found a ray of hope with Jen and with Jodi. Am I happy that she's there? Yes. Am I happy that Mr. Howell is there? Yes, but he still has to do some proving. [LR11]

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SENATOR LATHROP: Still has to do some what? [LR11]

JOAN O'MEARA: Proving. [LR11]

SENATOR LATHROP: Improving? [LR11]

JOAN O'MEARA: Yes, proving of himself. [LR11]

SENATOR LATHROP: Oh, proving. I thought you said "booting." (Laughter) [LR11]

JOAN O'MEARA: No, no. [LR11]

SENATOR LATHROP: I didn't know who you wanted him to boot. [LR11]

JOAN O'MEARA: You know, if I could move this chair up it would help. Okay. There. I wanted to answer a question, too, about your asking about how we serve the community programs. For years we have served the community programs with the OAITS program. Are you familiar with that? [LR11]

SENATOR COASH: Yes, I am. [LR11]

JOAN O'MEARA: And with the ITS program? [LR11]

SENATOR COASH: Yes. [LR11]

JOAN O'MEARA: All right. When we got that, and about, I think, it was '99 or 2000, no '99, we had a group that came in from the community programs. I think it was almost 200. And when we tried to send them back, after...and this is for behavior, and sometimes it was in the school systems. They wouldn't accept them back because they didn't have the expertise to handle the behavioral problems. So we had 128 people.

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What we were going to do with them? We couldn't push them out. So we had 128 more people in at BSDC than what we originally had. So...and the OAITs program is still going on and so is the ITS program. I am very pleased with what is happening at BSDC. The morale of the workers has come up and that was very important to me. These people suffered an awful lot in the newspapers and with people on the street that really didn't know much about the care of DD people. I was very impressed with how they handled themselves. And we have come a long way, but we still have a great way to go. There are several things that I'm very concerned about. One of them is there are so many levels of management. And when that happens the communication breaks down between each level. And I don't know how to fix that right now, I have to think about it and make some suggestions. Also the QMR's, which are...have become sort of like the kingpins, they have so many duties that they're being overloaded and overworked and when that happens mistakes are made and also people will leave the job. We can't afford that. Also, I IPPs, IPPs are the individual program plans, you get that 30 to 35 pages to read through and sometimes in it are medical terms, so you have to go to a medical dictionary to really figure out what's what, especially if you haven't attended the meeting where they will try to explain it. And I hear that the new IPPs are even longer than what just received. There has to be a change in those, and I'm hoping that there will be. Parents are interested in, one, is my child improving; what are the improvements; what are her new schedules or his new schedules. Don't tell me that, you know, brushing the hair, they want to have them reach and 85 percent code. Eighty-five percent? What's wrong with 100? You have to spend a little more time with them but I would say that. I am also very careful that they don't put down too many things that they want to work on. Three things are enough for one time, especially with Cindy's profound retardation and with others that are there. So IPPs need to be changed. And what kind of medicines they are, are they good, how do they react, what should I be looking for when I go see her? And I know that Channel 5 is being used, but some of the workers can't see that program, Channel 5. They're too busy with the clients. [LR11]

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SENATOR LATHROP: Channel 5 is the channel used to communicate... [LR11]

JOAN O'MEARA: Right. [LR11]

SENATOR LATHROP: ...between Jodi Fenner and the workers? [LR11]

JOAN O'MEARA: Right, right, right, right. But many of them are too busy to watch the Channel 5. These are nit-picking things. But nit-picking things are things that eventually become big. [LR11]

SENATOR LATHROP: We're glad we're down to nit-picking things. (Laugh) [LR11]

JOAN O'MEARA: Yeah, right, right. Well, you know, I've worked in the field 55 years, not only personally with Cindy, but I also taught with the mentally challenged individuals in the classroom. I worked in getting them into schools, going to the federal courts in Washington, getting help in the homes. So I'm not unfamiliar with the problems that do come into the field. And is BSDC needed? You bet. In the spectrum of mental retardation you've got so many steps along the way, but BSDC is really needed. [LR11]

SENATOR LATHROP: Very good. Well, thanks for the report. [LR11]

JOAN O'MEARA: Okay. [LR11]

SENATOR LATHROP: It's always good to hear from those who are involved in the use of the services. [LR11]

JOAN O'MEARA: Yeah. [LR11]

SENATOR LATHROP: Any questions? Oh, Senator Wallman has one for you. [LR11]

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SENATOR WALLMAN: Thank you, Chairman. Thank you for being here and thank you for being a strong advocate. [LR11]

JOAN O'MEARA: Yeah, well, thank you all for what you're doing. [LR11]

SENATOR WALLMAN: Also, want to thank my office. She did a lot, you know, for you, I think. [LR11]

JOAN O'MEARA: You bet. [LR11]

SENATOR WALLMAN: And so do you think the evaluations...how often do you have your daughter evaluated? [LR11]

JOAN O'MEARA: Well, she get a yearly evaluation. But then she also gets a quarterly evaluation, not only in like the IPP program, but also in the psychiatry program, psychologist program. And she gets quarterlies there and a yearly. [LR11]

SENATOR WALLMAN: And you're included in that? [LR11]

JOAN O'MEARA: Oh, yeah. [LR11]

SENATOR WALLMAN: Okay. [LR11]

JOAN O'MEARA: That's another thing, (laugh) I am...and this has happened to many of the parents. I was called one morning to tell me that Cindy had a psych, annual psych, two hours from then. I'm living in Lincoln. The communication somehow is breaking down there and between the parents, which needs to be changed. I just got that again yesterday, I was supposed to be there today. [LR11]

SENATOR WALLMAN: You're here, right? (Laughter) [LR11]

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JOAN O'MEARA: And I told them, no, I'm here. [LR11]

SENATOR WALLMAN: Thank you. [LR11]

JOAN O'MEARA: Yeah. [LR11]

SENATOR LATHROP: Any other questions? Joan, good to see you. [LR11]

JOAN O'MEARA: Okay, good to see you. [LR11]

SENATOR LATHROP: Appreciate the report from the Friends and Family. Next we'll hear from Jodi Fenner. Welcome back to the committee. [LR11]

JODI FENNER: (Exhibit 1) Hi. I just brought a few things to share that Doug had mentioned, you might be interested in. In your package you'll see an update on the Mosaic schedule. We're still on target there with those homes opening up. He asked that... [LR11]

SENATOR LATHROP: Why don't you just tell us what that is... [LR11]

JODI FENNER: Oh, absolutely. [LR11]

SENATOR LATHROP: ...instead of having us all dig around in our folders. And the people that don't have a folder can get an idea of where we're at with Mosaic. We entered into a contract with Mosaic to build some smaller ICF/MRs. [LR11]

JODI FENNER: There's 11 total homes, I believe, 6 of them, 5 of them are ICF, 6 of them are CDD's, MSU's, like the ENCOR facility, they're just basically home, it's just how you license it. It's a funding mechanism. Four of those will open up in March. So

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we're very, very excited. And the remainder of them will be staggered but will be open in 2010. [LR11]

SENATOR LATHROP: And those four, if I can...as long as you're on the subject, those four will provide a place to live for how many people? [LR11]

JODI FENNER: They will each have the capacity for six. [LR11]

JODI FENNER: They'll each have the capacity for six. [LR11]

SENATOR LATHROP: So you said four units, six people? [LR11]

JODI FENNER: Um-hum. Yes. [LR11]

SENATOR LATHROP: Okay. And will we see...and we'll talk a little bit... [LR11]

JODI FENNER: Um-hum. [LR11]

SENATOR LATHROP: ...hopefully, or address this. Those in nursing homes that were part of the 47 that left, they will have first crack at those openings? That's what I understand. [LR11]

JODI FENNER: Well, our priority is individuals still in the hospitals, and we have two people in the hospital who are waiting for Mosaic placement. And then after that, the second priority is individuals in nursing homes, and then Beatrice residents are the third priority. And then we open it up to other individuals. [LR11]

SENATOR LATHROP: And so we have two people that have been in the hospital since the medical license was pulled? [LR11]

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JODI FENNER: Yes. [LR11]

SENATOR LATHROP: How many people do we have in nursing homes? [LR11]

JODI FENNER: I believe we have four that are committed to temporary, and then we have others that we're still talking to. They're not really ready to commit to looking at community placement, but I believe once we open the Mosaic homes and they have a place to look at...it's really hard to talk to a parent about a place that isn't...that they can't see. [LR11]

SENATOR LATHROP: How many people are in nursing homes though? [LR11]

JODI FENNER: I believe there...it's in the upper 40s, individuals who we know that have left BSDC over the last several years and gone into nursing homes. [LR11]

SENATOR LATHROP: Okay. So we have 40-some people in nursing homes... [LR11]

JODI FENNER: Um-hum. [LR11]

SENATOR LATHROP: ...and two people that are still in hospitals. [LR11]

JODI FENNER: Yes. [LR11]

SENATOR LATHROP: They will be in the class of people with first priority... [LR11]

JODI FENNER: Yes. [LR11]

SENATOR LATHROP: ...for these 24 new open places? [LR11]

JODI FENNER: Yes. [LR11]

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SENATOR LATHROP: Yeah. That's not enough, is it... [LR11]

JODI FENNER: Well, not enough for the first ones. [LR11]

SENATOR LATHROP: ...if we're to move people from the nursing homes? [LR11]

JODI FENNER: And some of the individuals are of an age and of a level of functioning that I'm not confident we're going to be able to convince their guardians that an MSU is appropriate for them, and we have some individuals in their 70s and 80s which would be a normal nursing home placement. We're going to give them that opportunity, and in good faith we'd like to ask them to go see the Mosaic places because we really do believe they'll be good alternatives. The reality is when we're all said and done, I believe we'll have 66 openings which would be plenty to get everyone out of the nursing homes that chose to do so. Am I optimistic that we're going to be able to get them all out? I'm really not. We're going to do our very best and certainly communicate options and alternatives. [LR11]

SENATOR LATHROP: But they'll all be offered an opportunity? [LR11]

JODI FENNER: They will all be offered an opportunity. [LR11]

SENATOR LATHROP: Okay. [LR11]

JODI FENNER: And they will get first dibs before anyone from BSDC. [LR11]

SENATOR LATHROP: Thank you. I didn't mean to interrupt, but you were... [LR11]

JODI FENNER: No, that's quite all right. [LR11]

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SENATOR LATHROP: As long as you were on the topic, I was going to have you clarify something for me. [LR11]

JODI FENNER: Absolutely. [LR11]

SENATOR LATHROP: Go ahead. [LR11]

JODI FENNER: Sure. So that is our Mosaic schedule and, again, we're very happy to be on target there. The second one is in your packet you'll see a schedule for our Nebraska Developmental Disabilities Summit. One of the issues that we already knew we had in the community but one of the issues in the DOJ agreement was to provide more public education for not just the BSDC community but to bring in national resources. Obviously, all you have to do is look at our budget to know that I can't send 600 employees out of state for training. So what we've done is we've started sort of a version of what used to be called the Sharing Our Best Conference and we've taken that from BSDC. And this year we're going to hold it in Lincoln. And the hope is that we move that around a little bit each year. But we have a statewide conference every year to talk about national trends in DD services and also bring in experts who can come in and offer training to both employees at BSDC and in any community services. We can be very economically efficient when we bring in a group of trainers to open it up to both of those categories. So this is this year's summit. We're very happy with the individuals we've been able to get committed to bring in. We actually came up with these trainers, the presenters. We had a meeting with a parent and guardian group and other stakeholders, providers, medical providers. We also...we started this thinking we would just have a management tract which would be, again, general trends, nationwide trends, what we normally would have had in Sharing Our Best. When we started doing the restraint elimination at BSDC and we started to really focusing on positive behavioral supports, it became very clear to us as we talk to the provider community that they don't necessarily have those resources in the community. And some of the situations you hear about relate to individuals with behavioral challenges. And so we're offering this as

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a resource and we thought it was so important we're not just doing it in Lincoln. We're having the trainer stay an extra day and he's going to go out to Kearney, and that will be open to individuals who work for community providers. I don't believe we'll have our direct-care staff come to this because we've been providing this training on our campus for the last three months but, again, it was so important we thought we wanted to share that with the communities, so we did do that. As Dan mentioned, when you have things that occur on campus, we really need to make our campus look as much like a community setting. And this is an area where we think what we're doing on campus, we could emulate that in the community. And so positive behavioral supports are the keystone to what we do in our homes, and we'd really want to expand on that and, again, make that more readily accessible to the providers. And we also expanded to a family guardian tract. This was at the request of some of our parents, just some issues that they had questions with and their issues that relate to both BSDC and the communities, so that's open to all parents and guardians. And at the same time we'll have a provider fair going on so parents can see what options that they have. And then we did add a medical tract. One of the things that Dr. Ramadan really wants to do is grow a pipeline, and what we all want to do is grow a pipeline for medical professionals who are willing to serve the developmental disability community. And so that's one of the steps towards reaching that goal. So that's the summit schedule and that will go out in the mail, I believe, this week to a large variety of individuals that we hope will attend. The other item is...and I apologize, I completely dropped the ball on this one. You know we've had some dissatisfaction with the independent expert situation and we spoke to the Department of Justice and got their agreement to change independent experts. The independent expert that they proposed was Maria Laurence and the motion that's in your packet is the motion to replace John McGee with Maria Laurence as our independent expert. [LR11]

SENATOR LATHROP: Can I ask you a question? [LR11]

JODI FENNER: Certainly. [LR11]

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SENATOR LATHROP: When was the last report that McGee provided? Has he provided anything recently? [LR11]

JODI FENNER: No, no. There's nothing. [LR11]

SENATOR LATHROP: So it's been five months ago? [LR11]

JODI FENNER: Yes, it has. [LR11]

SENATOR LATHROP: Okay. I just want to make sure he didn't provide another report we didn't learn about and now he's being replaced. [LR11]

JODI FENNER: No, no. He hasn't provided a report. [LR11]

SENATOR LATHROP: Okay. And can you tell us a little bit about the new independent expert? [LR11]

JODI FENNER: Yes. [LR11]

SENATOR LATHROP: This was agreed to not just by the state of Nebraska but by the Department of Justice as well? [LR11]

JODI FENNER: It was actually an individual the Department of Justice proposed. They brought her down, oh, I think it's been a few months ago, they brought her down to visit us and sort of show her the job, so to speak, and maybe it was just a month ago. The last few months have been a little hectic. And so we were able to meet her. At one point in time, she worked directly for the Department of Justice several years, and in the interim she's been working as a consultant in various states on CMS and DOJ issues. She's served as a independent expert on several cases. I believe there's one in

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Tennessee. We did ask for a writing sample and I can't remember if we got that to Doug. If we didn't, we'll get that so the committee can see her CV and her writing sample because they did provide that. [LR11]

SENATOR LATHROP: The one thing you can communicate to the new expert, at least from the committee and I think I can speak for the committee on this, and that is instead of the general statements... [LR11]

JODI FENNER: Um-hum. [LR11]

SENATOR LATHROP: ...sometimes contradicting one another that we received in the McGee reports, I'm interested, we're interested in seeing line-by-line, item-by-item how are we doing relative to the DOJ report. Is it done? [LR11]

JODI FENNER: Yes. [LR11]

SENATOR LATHROP: If this is something that needed to be done, has it been done? And are we continuing to stay in compliance so that we see we have a list of the terms of the agreement and where we're at relative to them because it is, Jodi, as you might expect... [LR11]

JODI FENNER: Um-hum. [LR11]

SENATOR LATHROP: ...very hard for us to measure how we're doing when there is a list that tells us what needs to be done, and instead of getting...we're getting it done, you know, recommendation or agreement number 120 has been completed, we get general statements about improving and I appreciate the improvement, but it will help and if you can communicate that to the independent expert I'm sure it will be beneficial to us and I suspect as beneficial to you. [LR11]

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JODI FENNER: Certainly, and we actually did speak about that with her directly. We met with the senior management team at BSDC and Maria Laurence and the Department of Justice attorney, and parts of the agreement are generic, so to speak. They talk about reducing over time and they don't show a specific number. And so what we asked her to do is identify what are benchmarks that she's going to be telling us? What are the benchmarks that she's going to be measuring us against? I assume that would be national standards for other 24-hour facilities, things of that nature. While I agree that even once we meet a benchmark, we still have an obligation to continue attempts at reductions and continue to maintain the progress that we've already made. We need to know that we've met a benchmark, and that's what we've asked from her. And I've been assured at least that we'll be getting that, so. [LR11]

SENATOR LATHROP: Okay. [LR11]

JODI FENNER: We're very excited. She'll be here, I believe, the third week in February with a team to do a survey, so. [LR11]

SENATOR LATHROP: Good. Third week in February. All right. [LR11]

JODI FENNER: Yes. Your quarterly is in the packet as well. That's the same report based on the LR315, the new funding. That's just a report on how we're spending the funding that you were...that you allocated to us. And I just wanted to touch on a couple of the items that were discussed prior to me. I'm not going to repeat the things that Dr. Ramadan and Dan said, but I did want to hit on just a couple of things. Senator Coash asked about what do we do when the campus is empty? And I think we didn't really get to the answer, but the bottom line is the campus never is empty. We believe everybody at BSDC can be served in the community, but I think we need to remember that we've made promises to guardians that we're not going to force guardians who are acting in the best interest of the individuals that they serve to move somewhere that they're not comfortable. And so that being said, we do have a large number of individuals on

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campus who are either committed to either looking for community placement or have an open mind, at least they're willing to consider community placement. For the ones who are highly opposed to community placement, we've explained to them you can be opposed but you do have an obligation as a guardian to at least listen to what your options are. You can't say no without considering the options. It's sort of like informed consent in the medical arena, only this is a different arena, but it still has to be an informed decision, you just can't say no. So even parents who are staunch advocates of "we're going to stay at BSDC forever," that can be their position but it has to be an informed choice. And so what we're doing, as I told you when we last met and I think we've had some conversations in between as we have a new service coordination team, and that is their job is to make sure that all parents are notified of their options and that we go through that informed consent process because that is required by the Department of Justice agreement. There are some potential threats to that coming down the pipe that we have to be wary of. I did send Mr. Koebernick some testimony that, the head of the Civil Rights of Institution...the CRIPA, the CRIPA division. Basically, the Department of Justice, the division that came down and did the DOJ survey and who we had settled with, they have a new head who is a presidential appointee who has spoke at the National Art Convention, and it is his mission to essentially make sure all individuals are served in the community and the guardian choice isn't really in his speech. I've shared that speech with Doug and I'd be happy to share that with everyone else. That isn't an opinion that we share. We still believe the guardian choice is very important and it isn't so much just because the guardians are responsible for the individuals, but for an individual to transition to a community environment they have to have their family supports. If you're doing something against a family's wishes...there are a lot of issues there. And what we really think is our job in DD is to provide good alternatives because we feel very strongly that our parents will do what's best for their children. And it's our job to give them good alternatives, not just to say: You must look at a community placement. But it's our job to develop good community opportunities because we believe that when we do that and when we're successful in that, that they will do what's best for their loved ones. So when we talk

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about everybody can live in the community, I think Dan said it best: For some of those individuals, that will be in the next few months; for others that could be years down the road. But that's going to be a joint effort between BSDC, the community providers, and the other stakeholders, including the parents and guardians. And even when people transition to the community, we still see a place for BSDC 10, 20 years down the road or whatever that time period might be because if you looked at states who have eliminated their ICFs, they still have that fallback of some state provision of services because what if you get into a situation where a provider closes? We have a provider at this point in time who is reducing their services because they're having trouble with some issues. And with all due respect to them, we appreciate that they realize that they've overextended themselves and we're working to find new places for those individuals, that's going to happen over time and we have to as a state be prepared to have a fallback in those positions. When...the other discussion I wanted to address was the QMRP and IPP situation. Unfortunately one of the things that has happened over time, and I don't know when it happened, but when I came on board, our QMRPs had case loads of 30 and 35 individuals and they were doing a lot of clerical work. They still are doing a lot of clerical work. We're trying to break some old habits and some old systems because if you read the CMS standards, the QMRP is a very, very important role. I mean, it's qualified mental retardation specialist. They are supposed to manage the person's IPP. They are supposed to be the center of that person's planning and oversight, and you can't do that if you serve 30 people. It isn't like standard service coordination. It is really...it's really an important role. It's such an important role that it's written into the standards of CMS. And so we've tried to take almost two decades of practice and we're trying to retool what we're doing. We've had some bumps in the road. We've changed the IPP based on the DOJ recommendations and the CMS recommendations and all of the consultants that have been on our campus. The reality is what we've got was something that wasn't workable. We know that. We're going to have to look at that again and we have a work group that we're going to be putting together. The home managers and QMRPs have been looking at it right now, but we really have to reassess that. It has everything in it DOJ wants, but it's really not in a

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format and of a link that it is a functional document, and it's a very wieldy process that isn't feasible. So we're going to work on that. And the IPPs are a very important part of what the QMRP does. But we really have to work on pulling some of the non-QMRP tasks, as CMS sees them, away from those individuals and that's why we have things like home managers and shift supervisors. And I know those seem like other layers of management, but they're the oversight functions that DOJ is going to require and we can no longer have a home that just has, you know, a set of direct-care staff working in there with no supervision because if we do that, then we go back to where we were a couple of years ago when we got into trouble. There has to be a midlevel management structure at BSDC because we're just too large to put individuals in a home and put them through their little, you know, training course and say, have fun and take care of the people in this home. There really has to be some oversight there. And I know it's expensive and I know it seems like extra management, but it really is important to what we do and it's important to making sure that where we're at, we continue. But it isn't just they're sitting there watching people. They're actually...they're like working supervisors, they do some training and things like that. And also, our nurses. When Dr. Ramadan talks about all the nurses in the home, one of the things he didn't touch on is their nurses do more than just nursing. They do training. They work along side our direct-care staff on various issues that occur in the home. One of the things that we're very proud of this year is when you look at the level of viral infections and flus and pneumonia in the state and you look at BSDC, we're doing pretty awesome. And that's thankful to our nurses and our direct-care staff, too, because they all work very well together on infection control issues. And that's part of that educational component of having the management and the nursing staff in the homes. And so we're very happy we think that that's been very...it's contributed to the health of the people that we serve and also the people that work at BSDC. And honestly, I didn't prepare a lot because I assumed those guys would tell you most of what you need to know, so. [LR11]

SENATOR LATHROP: You've done fine, you've done fine. I feel like we're getting good information... [LR11]

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JODI FENNER: Good. [LR11]

SENATOR LATHROP: ...from the panel... [LR11]

JODI FENNER: Good. [LR11]

SENATOR LATHROP: ...that we've asked to speak. And maybe what we'll do is open it up to some questions. [LR11]

JODI FENNER: Great. [LR11]

SENATOR LATHROP: Senator Wallman. [LR11]

SENATOR WALLMAN: Thank you, Senator Lathrop. Thanks for being here. [LR11]

JODI FENNER: Thanks. [LR11]

SENATOR WALLMAN: Middle management, like, you know, I have trouble with that but that's the way it is I guess. Are they also trained to do direct care work, direct-care staff? [LR11]

JODI FENNER: Um-hum. Yes, yes. [LR11]

SENATOR WALLMAN: So if somebody is gone, they can also take that over? [LR11]

JODI FENNER: Yes. [LR11]

SENATOR WALLMAN: Okay. That's good. And as far as the...say we transfer a patient out of...a resident out of BSDC to a private-care institution, does the money totally follow

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the resident? [LR11]

JODI FENNER: We haven't transferred any money from BSDC yet because if you'll recall in the biennium budget. You also budgeted \$5 million in addition to my BSDC budget in allowing the money to follow the person, you also gave me \$5 million to fund BSDC care in the community. And we haven't hit that number yet. The other really important thing to note is we have about a \$62 million budget now; next year that goes down to \$54 million based on the reduction in census and with the anticipation that we would be reducing a lot of the expensive contracted services that we have. So if I'm removing, I'm not just removing it off of my current budget, I would be removing it off of my level of next year. So I have to be very cautious and we haven't done that yet, but we do have the capability of doing that. [LR11]

SENATOR WALLMAN: And I'm concerned too. Like you said, some private-care providers are not going to be able to afford to keep doing it. So we have a terrible time in here to fund money for that, you know. And so do you think we're going to have to, you know, provide more money for privates? [LR11]

JODI FENNER: Well, part of that is the assumption that we send people out with a standard funding package. You know, we just send them out with an OAP. [LR11]

SENATOR WALLMAN: Yeah. [LR11]

JODI FENNER: And as I mentioned when I was here last time, we called...when CMS offered free consulting services, we were the first...we were actually the first state to call. And they graciously gave us funds to have Robin Cooper from the National Association of Developmental Disability director. She came in and gave us...we did some strategic planning, we talked about our funding structure. And when we look at our funding process, the objective assessment process that the ICAP is, I think, the tool that we used. It's a really good tool. It's nationally recognized, but it doesn't account for

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individuals with high behavioral or high medical needs. And what we've been doing to account for that is when we have somebody who clearly the ICAP doesn't really address, we do what we call exception funding. As a state, we thought we were really high on exception funding. And when we called Robin Cooper in, we were...that was one of the things at the top of our list is: Is there another assessment tool? How do we do this? And when we told her what our exception process was with our numbers, she went: Oh, I expected you would have hundreds in this process. And no, we're well under 100. I think we have about 50 people being served in some type of exception funding. But the reality still exists when we move somebody into a community placement, particularly somebody who has been institutionalized for a very long time. They're going to have a different level of need when they come out and the standard assessment tool that we use doesn't account for that. So we have to look at them on an individual case-by-case basis. And when we do our new waivers, one of the things we also want to go to is something that's called individual-based budgets where an individual gets their budget. And while they may need a certain level of care and a certain type of care at one time during their life or during the year, it allows flexibility within that individual's team in the community to address that issue, particularly individuals with a high...with real challenges and high medical needs, they're not going to be consistent over a year's time period. But yet our current funding structure is flat. This is the amount of money you get every month, and that isn't reasonable for those situations. So what we would do in that situation is an individual would have an annual budget and they would manage it on a monthly basis, and there would be some protections in there so they don't overspend their budget in one month. But what we'd like to go to is if they can use their budget to pay for their monthly needs, but then when spikes occur they have the flexibility as a team because they still have teams in the community to adjust their funding levels within that annual budget. We're not there yet because we actually have to change our waivers when we go through what we call our state plan amendments. This next summer a new state plan is due, and so we're working on that, but that's one of the ways we're addressing that. In the interim, we're just doing exception funding for those individuals. [LR11]

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SENATOR WALLMAN: And also going further on this here, say Joan takes her child home for a couple of days. [LR11]

JODI FENNER: Um-hum. [LR11]

SENATOR WALLMAN: Does the provider lose funding then those two days? [LR11]

JODI FENNER: They're...I think those are leave days and they're not funded for those. So I believe that's... [LR11]

SENATOR WALLMAN: So that makes it hard. Yeah. [LR11]

JODI FENNER: Yeah. And that's a Medicaid requirement. [LR11]

SENATOR WALLMAN: Okay. [LR11]

JODI FENNER: I mean, we have to follow the Medicaid law. But under the new system of individual budgets, what that would allow to happen is for individuals, then they would have to save that money in their budget. They could use it some other time during the year for other services. [LR11]

SENATOR WALLMAN: Okay. Thank you. [LR11]

SENATOR LATHROP: Very good. Senator Karpisek. [LR11]

SENATOR KARPISEK: Thank you, Senator Lathrop. Thank you, Jodi. Good job. [LR11]

JODI FENNER: Thanks. [LR11]

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SENATOR KARPISEK: Keep it up. I want to...I think Senator Wallman asked about more new people coming into BSDC. [LR11]

JODI FENNER: Uh-huh. [LR11]

SENATOR KARPISEK: Is that a goal once we get recertified? Where are we headed on that? [LR11]

JODI FENNER: I think something we have to keep in mind is when we get recertified...our current license, I'm not sure if you're aware but it's for over 400 people. I could not possibly serve 400 people adequately at BSDC. I just can't do that. We have really good staff now, we've been able to maintain them. But when we asked for a new license, it's not going to be for 400 people. We'll have to do an assessment. And when we have the team come in and do the external survey, we'll also be asking them for some assistance in determining what would be the appropriate license population because we do want to make sure that we have some excess capacity to provide for needs if somebody does need to come in. But a lot of what we're doing is providing those supports in the community when flare ups or challenges occur in a timely basis. We do have an ITS and OTS program. Historically, it takes--gosh--almost six weeks after you report that you have a need before our team would ever be able to come get you and help you, but it isn't because they weren't doing a good job; it's because the demand was so high. And one of the things we did under the...one of requirements under the DOJ agreement was to expand that program, and we've done that. And so we've been...in high-needs circumstances, we've been able to respond in 72 hours. And so the hope is that we are improving the supports to community providers in a way that that doesn't occur. The reality is if that does occur, we need to have excess capacity so that we can accept the individuals. And the best example I know of is if a provider closes. [LR11]

SENATOR KARPISEK: Okay. [LR11]

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JODI FENNER: We hope that never happens. We hope that we're able to work with providers so that that doesn't happen, but in the reality if it does, we have to be ready as a state to care for that population. [LR11]

SENATOR KARPISEK: Very good. Thank you. Thank you, Senator Lathrop. [LR11]

SENATOR LATHROP: I've got a few questions for you. [LR11]

JODI FENNER: Sure. [LR11]

SENATOR LATHROP: Is it fair to ask you when you think we're going to get recertified? [LR11]

JODI FENNER: (Laugh) You can ask and I'll give you the best answer I have. As Dan said, we're already doing the mock surveys. I think he's way optimistic to think we're going to get those done in January. We sort of balance each other out. He's the optimist; I'm like, wary, no, let's make sure. I think it's really going to be closer to summer before we're ready to have the external mock survey committee team come in. Assuming that we don't find anything significant in our mock surveys...and we have found some little things, they're things that we're addressing, so I'm...I say that based on the fact that I'm hopeful we don't find other significant items. [LR11]

SENATOR LATHROP: Jodi, even if you did everything anybody could ask you to, I would expect those mock surveys to show some deficiencies... [LR11]

JODI FENNER: Sure. [LR11]

SENATOR LATHROP: ...and some oversight, so. But you do the mock surveys. [LR11]

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JODI FENNER: Um-hum. [LR11]

SENATOR LATHROP: Sometime this summer you think you'll be ready to pay somebody to come in and do a pretend CMS survey? [LR11]

JODI FENNER: Yes, yes. [LR11]

SENATOR LATHROP: And to look the place over... [LR11]

JODI FENNER: Um-hum. [LR11]

SENATOR LATHROP: ...and get an outside pair of eyes on it. [LR11]

JODI FENNER: Absolutely. [LR11]

SENATOR LATHROP: And if that goes well, then you call CMS. [LR11]

JODI FENNER: Um-hum. Then we actually fill out a new application and there's a process for that. [LR11]

SENATOR LATHROP: But that could very well show some things that you've been overlooking. [LR11]

JODI FENNER: It could very well. [LR11]

SENATOR LATHROP: Okay. Do you have a time table you're working with? And if you can't answer the question because there's too much uncertainty, I'll let you by with that. [LR11]

JODI FENNER: I will tell you our goal is fill out new application in 2010. That is our goal.

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We're going to do our best to meet that goal, but...and I think it's a realistic goal but if things change, then there may be some delay there. But that's out goal. [LR11]

SENATOR LATHROP: Okay. [LR11]

JODI FENNER: Because I think...and I, you know, Dan said we could pass a survey today. I think we have all the skills and all the resources on campus to pass a survey today. I don't think we would pass a survey today because I don't think we could pass the stress of a survey, and that's part of the training we have an obligation to provide our staff, not just how to do your job but how to do your job in a regulatory environment. It's pretty scary when you have a team of six people walk into your home, the home that you work in. I would be intimidated and I work in a legal environment. So we really have to do that part of the training as well. [LR11]

SENATOR LATHROP: I have another question about the waiting list. [LR11]

JODI FENNER: Um-hum. [LR11]

SENATOR LATHROP: When we came into this special session, we used up some of the money from the waiting list because... [LR11]

JODI FENNER: Um-hum. [LR11]

SENATOR LATHROP: ...you couldn't find services or, and I'm going to say this, you couldn't spend it fast enough. [LR11]

JODI FENNER: Sure. [LR11]

SENATOR LATHROP: And that may not be exactly the most artful way to put it, but are we going to use and provide services and exhaust the appropriation that the Legislature

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made for the waiting list? [LR11]

JODI FENNER: We sure hope so. We've already authorized all of it, I mean, the whole through next year. People who wouldn't normally have...they don't have their appropriation money until next year, we've already authorized that so that we can get up and running. One of the things that we've been pleasantly surprised about, as you know, the federal government has continued our enhanced matching rate and some things of that nature that have made us be able to do more with less. And so... [LR11]

SENATOR LATHROP: I think it's going further than we imagined it would. [LR11]

JODI FENNER: It is, it really is. And also a lot of people ask for services not really knowing once they work with a provider what are they really going to use. And I really do anticipate that in the next six months we're going to see that some individuals aren't using everything that they were authorized for. And then what we will do is we will do another round of offers. [LR11]

SENATOR LATHROP: My concern is this though. [LR11]

JODI FENNER: Uh-huh. [LR11]

SENATOR LATHROP: It seems to me, as I recall, we authorized \$5 million the first year of the biennium... [LR11]

JODI FENNER: Um-hum. [LR11]

SENATOR LATHROP: ...and \$10 million the next. [LR11]

JODI FENNER: Yes. [LR11]

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SENATOR LATHROP: The idea being \$5 million of the \$10 million in the second year will go to provide continuing services for the people who received... [LR11]

JODI FENNER: Yes. [LR11]

SENATOR LATHROP: ...services through the first year and that we will then provide another group of people services. In the end at the end of the two-year biennium, are we going to have money left over or are we going to be able to use all that's been appropriated and get services to people on the waiting list until we've met the financial constraints of the appropriation? [LR11]

JODI FENNER: If there's any way we can, we're going to spend every dollar you give us, quite frankly. We've already...when I say we've authorized the money, we haven't just authorized this year's \$5 million, we've authorized the full \$10 million. I mean, that's what I directed my staff to do because we knew it was going to take a while to spend the money, and so that's what we did. [LR11]

SENATOR LATHROP: Okay. At the rate we're going, we get to the end of the biennium... [LR11]

JODI FENNER: Um-hum. [LR11]

SENATOR LATHROP: ...what's our waiting list going to look like? I understood that we...the waiting list was at 2,000, and as we went through... [LR11]

JODI FENNER: Yeah. [LR11]

SENATOR LATHROP: ...and started to offer these services, some people said they didn't need them and so people went off the waiting list. And then when there was some sense of optimism that the waiting list was being addressed, we picked up new people

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on the waiting list. Is that a fair statement? [LR11]

JODI FENNER: We did, and actually what some people did was they said I don't need services now. So they were offered services, so they come off the waiting list, and then they go back on with a new date of need. So basically they just went to a lower level of the waiting list and gave somebody else who needs services right now services. [LR11]

SENATOR LATHROP: So what do you think that hard waiting list is going to look like at the end of the biennium? [LR11]

JODI FENNER: You know, I really...I don't have that answer for you today, Senator Lathrop. I would hope it was around 1,000 because I do think we're going to be able to do another offering, so I would hope it would be around 1,000 people but I'm guessing, completely guessing. [LR11]

SENATOR LATHROP: And a thousand would be after we've made the other offering... [LR11]

JODI FENNER: Um-hum. [LR11]

SENATOR LATHROP: ...after we've essentially spent the \$15 million that was appropriated? [LR11]

JODI FENNER: Yes. [LR11]

SENATOR LATHROP: Okay. And I have just a couple more questions. The next one is about regulations. [LR11]

JODI FENNER: Sure. [LR11]

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SENATOR LATHROP: You know, I put a bill in, in the wake of the LR283 committee's... [LR11]

JODI FENNER: Yes. [LR11]

SENATOR LATHROP: ...recommendations that we should have regulations for the community-based programs. [LR11]

JODI FENNER: Yes. [LR11]

SENATOR LATHROP: And immediately there was some flurry that we're just on the edge of doing this and nothing is happening... [LR11]

JODI FENNER: Yeah. [LR11]

SENATOR LATHROP: ...or at least it doesn't appear to be that anything is happening. Just answer this question for me. [LR11]

JODI FENNER: Um-hum. [LR11]

SENATOR LATHROP: How close are we to having regulations that control the community-based or provide regulation of the community-based programs? [LR11]

JODI FENNER: I believe we'll have those public notices by the end of the month. [LR11]

SENATOR LATHROP: Okay. And the public notice would be you send the notice out so people can come... [LR11]

JODI FENNER: Um-hum. [LR11]

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SENATOR LATHROP: ...and comment on the regulations. [LR11]

JODI FENNER: Yes. [LR11]

SENATOR LATHROP: That sounds really close. [LR11]

JODI FENNER: Yes. We've already actually shared the draft regulations with a core provider stakeholder group, and we...putting together two sets of regulations into one and working with three different divisions has been challenging and it's really tasked us with thinking outside the box and working together. And we've really changed the regulations a lot. They're not going to...I mean, I think it's fair to say they're not going to look like the ones before, and for many people who saw them, they were surprised. That being said, when providers looked at them, there were a lot of errors, a lot of things that weren't intentional. And when you make massive changes, sometimes you make unintentional changes. So we've spent the last month fixing some of those. Honestly, some of the things that the providers want we just can't do, but a lot of the things they want we can do and we've tried to do that when possible. But I believe my staff was looking at final versions. We're down to fixing typographical errors and things like that. So I believe those will be public notice by the end of the month. [LR11]

SENATOR LATHROP: Okay. That sounds good. [LR11]

JODI FENNER: Good. [LR11]

SENATOR LATHROP: Any other questions? I don't see any. [LR11]

JODI FENNER: Right. [LR11]

SENATOR LATHROP: And you know, Jodi, I think I've talked to a lot of families who you have touched since you've become the director. [LR11]

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JODI FENNER: Thanks. [LR11]

SENATOR LATHROP: And I've talked to a lot of people who are associated with BSDC and with the community-based programs, and they are universally impressed with the amount of effort you're putting into it and your knowledge, and we truly appreciate what you're doing. As I said before, ultimately those of you who have been here today will be judged by when we get recertified, whether we get recertified, whether we slip back into a place we found ourselves in. And it's hard for us to tell when that's happening. Whether the ship starts turning the other way and going south on us sometimes doesn't become apparent to the Legislature until we hit an ice burg. I can continue with the analogy or the metaphor. So what I would suggest to you is that if you need resources, whatever you need, be sure to tell us because ultimately we'll ask you back here and we'll talk to you if things aren't going the way they need to. And we want to make sure the one reason that they're not going the way they should, if that should come to pass, isn't that you didn't get the resources you need. But thank you very much for what you're doing. We very much appreciate your leadership and your hard work. [LR11]

JODI FENNER: Thank you. [LR11]

SENATOR LATHROP: And I think with that, I did promise members of the committee that we would be out of here by 3:30, so I will agree to stick around for a little bit if those who might have wanted to speak or talk care to chat, otherwise I think that will conclude our hearing today. Thank you. [LR11]